

THOMAS J. MILLER
ATTORNEY GENERAL

CONSUMER PROTECTION DIVISION



Address Reply To:
Hoover Bldg., 1305 E. Walnut
Des Moines, Iowa 50319
Telephone: 515-281-5926
Toll Free: 888-777-4590 (In Iowa)
Fax: 515-281-6771
www.iowaAttorneyGeneral.gov

Department of Justice

September 24, 2012

W. Charles Smithson
Chief Clerk of the Iowa
House of Representatives
Iowa House of Representatives
Iowa State Capitol

VIA Local Mail and e-mail

RE: Annual Iowa Consumer Credit Code Report

Dear Mr. Smithson:

Attached please find the 2011 Annual Report of the Administrator of the Iowa Consumer Credit Code. This Report has been generated pursuant to the duties of the Administrator under Iowa Code section 537.6104(5).

Section 537.6104(5) further requires this Report to be communicated to the general assembly. This correspondence, along with a simultaneous correspondence to the Secretary of the Iowa Senate, constitutes that communication.

Members of the Iowa House of Representatives may contact us at any time with any questions or comments they may have regarding this Report or about any facet of the administration of the Iowa Consumer Credit Code.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Brauch".

William L. Brauch
Special Assistant Attorney General
Administrator-Iowa Consumer Credit Code
Director-Consumer Protection Division

A handwritten signature in black ink, appearing to read "Jessica Whitney".

Jessica Whitney
Assistant Attorney General
Deputy Administrator-Iowa Consumer Credit Code

2011 Annual Report of the Iowa Consumer Credit Code

The Attorney General is directed by Chapter 537 of the Iowa Code to administer the Iowa Consumer Credit Code (hereinafter "ICCC"). Since 1974, the Attorney General has delegated primary authority for the administration and enforcement of the ICCC to the Consumer Protection Division (hereinafter "CPD"). The head of the CPD is the Administrator of the ICCC and has traditionally appointed a Deputy Administrator to oversee the day-to-day duties of regulating and enforcing the ICCC. The current Administrator is Bill Brauch, Director of the CPD, and the current Deputy Administrator is Assistant Attorney General Jessica Whitney.

The Administrator's responsibilities under the ICCC include resolving complaints, investigating serious complaints, formulating and carrying out litigation, drafting legal opinions, conducting consumer credit educational activities and programs, and monitoring the status of consumer credit in the state. The Administrator coordinates with other Iowa agencies and other states with versions of the Uniform Consumer Credit Code.

Iowa Code section 537.6104(5) directs the Administrator to report annually on the ICCC and the state agencies charged with administering the ICCC, as well as the general availability of credit. This report is broken down into sections that correspond with the reporting requirements of Iowa Code section 537.6104(5).

The contents of this report are compiled from the previous year's report, with relevant information updated to reflect recent changes.

1. Consumer Complaints

Iowa Code section 537.6104 allows the Administrator of the ICCC to handle consumer complaints and encourage voluntary compliance with Code requirements. The Administrator engages in a conscious effort to combine those two responsibilities. When handling consumer complaints, the Administrator generally seeks voluntary compliance first and takes legal action when needed.

The processing, assignment, and handling of ICCC complaints is a part of the daily activity of the Division. The CPD received a total of 3,658 written consumer complaints during the 2011 calendar year, at least 1,007 of which were filed directly pursuant to the ICCC. Though complaints whose main focus was credit concerned about 28% of the total received by the CPD, hundreds of other complaints also involved credit, such as home improvements and auto issues.

Complaints concerning credit ranked highly in the top categories of consumer complaints and should continue to be regarded as an area of major concern. The credit complaints break down as follows, with their rank in relation to other categories of complaints:

- | | |
|-------------------------|-----|
| 1. Home Mortgages | 491 |
| 2. Debt Collection | 416 |
| 8. Motor Vehicle Credit | 100 |

For all complaints, many of the inquiries handled by the CPD can be resolved by explaining the applicable provisions of the ICCC to those involved in the complaint. Other times, the office must first investigate the complaint and determine the facts in order to outline to the parties how the law applies

to their situation. The CPD strives to resolve the complaints in a manner that makes the consumer whole, where appropriate.

Complaints concerning debt collection practices continue to appear close to the top of the list, coming in second place for the second consecutive year after a string of years ranking first. The CPD's policy toward debt collection complaints is to resolve them at the administrative level, obtain redress for any aggrieved consumers, and stop any problematic practices. Article 7 of the ICCC sets forth with impressive thoroughness exactly what debt collection techniques, practices, and procedures are prohibited. Most debt collection complaints are filed by consumers aggrieved by what they believe is an unlawful debt collecting practice. Generally, the CPD resolves the problem through an informal agreement with the lender or debt collector. When the ICCC is clearly violated, the CPD requires not only redress for the aggrieved consumer but the Administrator may seek and obtain an Assurance of Discontinuance pursuant to Iowa Code section 537.6109 where the creditor or collector clearly states that they have been notified as to what is wrong with their practice in question and that they are agreeing to discontinue it. In some instances, the creditor or collector is able to demonstrate either that there has been no violation of the ICCC or that any violation was unintentional and the creditor or collector intends to comply with the statute.

When informal resolution of debt collection complaints is insufficient, the CPD engages in enforcement actions to ensure Iowa lenders and debt collection agencies keep their practices in compliance with the ICCC. The CPD has also been involved in potential multi-state actions against debt collectors and this year obtained major settlements against two of the nation's largest debt collection firms. Both settlements provided for consumer restitution in addition to injunctive relief. These multi-state actions provide an excellent opportunity to investigate companies, stop any prohibited practice, and obtain appropriate redress thanks to their increased resources and jurisdictional reach.

Additionally, the CPD receives a number of complaints based upon problems arising from automobile financing. The growth of automobile dealers that self-finance, known as "Buy Here, Pay Heres," has caused an increase in the number of auto finance complaints and ICCC violations. Many of these complaints have led to larger investigations of dealers. The investigations have revealed the underreporting of finance charges, illegal late fees, and failure to issue notices of rights to cure, among other violations. In calendar year 2011, the CPD obtain Assurances of Discontinuance against two Iowa used car dealers and initiated over a half dozen more investigations. The resolution of these investigations is usually a refund of all illegal charges, new proper paperwork and procedures, a civil penalty, and the signing of an Assurance of Discontinuance pursuant to Iowa Code section 537.6109.

In addition to the formal written complaints the CPD receives, the day-to-day work of the attorneys working on ICCC problems often involves interacting with the borrowing public, credit industry, attorneys, and other state agencies about compliance with the ICCC. Iowa Code section 537.6104(1)(d) requires the Administrator to counsel persons and groups on their ICCC rights and duties. The day-to-day activities in administering the ICCC involve numerous emails, telephone calls, letters, informal interpretations, responses, and resolutions between the CPD office and the various parties outlined above. In addition to advice given via phone and email, the CPD also issues what are called informal advisory opinions, which are written responses to questions concerning credit and/or the interpretation of the ICCC. In 2011, the office released four informal advisory opinions concerning topics like debt collection, open-end accounts, accounts receivable and origination fees. All informal ICCC advisory opinions are available on the Attorney General's website.

2. Credit Education

The ICCC also requires that the Administrator establish educational programs on credit practices and problems. *See* Iowa Code § 537.6104(1)(e). With limited staff to devote to ICCC matters, the CPD has made education for consumers, the lending industry, and members of the Bar a top priority. The recent financial crisis has only served to underscore the need for greater financial education.

During the past year presentations were made to a number of large groups concerning state and federal consumer credit laws. In April at the annual meeting of the Iowa Home Ownership Project (“IHOEP”) the Deputy Administrator gave a talk and took questions on the new consumer protections afforded by the Dodd-Frank Act and the creation of the Consumer Financial Protection Bureau. In May, the Deputy Administrator addressed the members of the Iowa Land Title Association (“ILTA”) at their annual meeting. The Deputy Administrator talked to the ILTA about new mortgage law and current trends in mortgage fraud.

The CPD also participates in a variety of less formal consumer-oriented conferences, seminars, meetings, and speaking presentations, including presentations to graduate level college classes, law school classes, high school classes, and senior citizens' groups. The attorneys and investigators of the CPD speak around the state on the general topic of consumer fraud and protection in Iowa. Though these presentations deal more generally with the overall work of the CPD, they also discuss the basic provisions of the ICCC and often respond to specific ICCC questions from audience members. The CPD also assists with an “Attorney General Booth” each year at the Iowa State Fair, staffed by employees from throughout the Attorney General's office. Many of the questions from consumers visiting the booth pertain to consumer credit, and many of the educational materials offered to the public through the booth seek to inform consumers about the ICCC and its consumer credit protections.

The Division has also provided guidance and education in the field of motor vehicle financing. The staff has given advice on continuing education courses for motor vehicle dealers, focusing on motor vehicle finance. In addition, the Division has contributed to a dealer outreach piece sent out by the Iowa Department of Transportation.

In monthly publications entitled “Consumer Advisories” the CPD reaches tens of thousands of Iowans. The “Consumer Advisories,” are bulletins that provide tips and information to consumers on relevant consumer issues. During 2011 a number of these focused on consumer-credit issues including online payday loans and identity theft prevention. These advisories are sent statewide to over 3,000 groups and communities and are free to reprint and redistribute. They are also available on the Attorney General's website.

In addition, to public speaking, meetings, and publications, staff members also have informal discussions and meetings with affected individuals. It is not uncommon for businessmen or members of the credit industry to come into the CPD office with their attorneys to ascertain what they must do to comply with the ICCC. Staff members regularly respond to questions posed by other state agencies, as well. The many ICCC-related questions posed to staff members during all these public contacts shows that there is still a great deal of confusion about the law, and that even a stronger educational campaign may be needed.

3. Developments in Iowa Consumer Credit Law

In 2011, two cases concerning the ICCC were decided by the Court of Appeals of Iowa. Since both cases were unpublished opinions, their precedential value may be limited in future cases.

In *Gemini Capital Group v. New*, No. 10–1096, 2011 WL 3925723, at *2 (Iowa Ct. App. Sept. 8, 2011), the Court of Appeals considered whether a generic, unsigned cardholder agreement was sufficient to establish the presence of a written contract. The deadline to file suit to collect outstanding debt is determined by whether a contract is written or unwritten.

In *Gemini v. New*, a third party debt buyer purchased the right to collect a consumer's credit debt. *Id.* at *1. More than five years after the consumer's most recent payment, the third party debt buyer filed a petition to collect the account's outstanding balance plus interest. *Id.* The third party debt buyer provided the court a balance statement of the consumer's account, evidence of the assignment of the debt through other debt buyers, and a sheet outlining the terms and conditions of the account. *Id.* The consumer argued the right to bring suit had expired under the statute of limitations. *Id.* Iowa Code § 614.1 outlines when lawsuits must be filed to avoid being barred by the statute of limitations. Causes of actions founded on unwritten contracts must be filed within five years after they accrue. Iowa Code § 614.1(4). Causes of actions founded on written contracts must be filed within ten years after they accrue. Iowa Code § 614.1(5).

The Iowa Court of Appeals agreed with the consumer that the third party debt buyer did not provide evidence of a written contract. *Gemini v. New*, 2011 WL 3925723, at *3. None of the documents presented were signed by the consumer. *Id.* The generic terms and conditions sheet did not include the consumer's name. *Id.* Where a proposal is written but the acceptance is made orally, the contract is considered unwritten. *Id.* Absent evidence of a written contract, the shorter five year limitation applies in suits for collection of debt under the ICCC. *Id.*

A second case, *Gemini Capital Group v. Foley*, No. 11–0148, 2011 WL 4579635, at *1 (Iowa Ct. App. Oct. 5, 2011), considered whether a third party debt buyer complied with the ICCC's requirement to give proper notice of a right to cure before demanding payment of the total, accelerated balance due on a consumer's account.

Here, a third party debt buyer acquired the rights to a delinquent credit card account. *Id.* The original creditor did not serve the debtor with a notice of right to cure as outlined in Iowa Code § 537.5111. *Id.* The third party debt buyer sent the debtor a letter notifying her that she had defaulted on her account and specifying a total amount due. *Id.* This amount did not include an itemization of any delinquency or deferral charges. *Id.* at *2. This letter included language stating "you may cure the default by paying the account balance shown above or making acceptable arrangements to do so." *Id.* at *3. The debtor did not cure the default and the third party debt buyer filed suit to collect the outstanding balance. *Id.* at *1. Judgment was ordered against the debtor and the debtor appealed.

The Court of Appeals of Iowa reversed the prior order, ruling that the third party debt buyer did not comply with the ICCC. Iowa Code § 537.5110 outlines the steps a creditor must follow to make a consumer's obligations in a consumer credit transaction enforceable. *See* Iowa Code § 537.5110(1). If a consumer has the right to cure a default on a consumer credit transaction, the creditor must give the consumer a notice of right to cure "before commencing any legal action in any court on an obligation of the consumer and before repossessing collateral." Iowa Code § 537.1110(2). The ICCC specifies that a notice of right to cure shall contain "a statement of the total payment, including an itemization of

any delinquency or deferral charges.” Iowa Code § 537.5111(1). The ICCC also specifies that a notice of right to cure shall contain “a brief identification . . . of the consumer’s right to cure the default, [and] a statement of the nature of the right to cure the default.” Iowa Code § 537.5111(1).

The Court of Appeals ruled that both a proper itemization as well as a proper statement specifying the consumer’s right to cure were not present in the letter sent to the consumer. *Gemini v. Foley*, 2011 WL 3925723, at *3. Itemization of fees assessed, including delinquency and deferral charges, is necessary to comply with the ICCC. *Id.* at *3. Such itemization is necessary to inform consumers of how their total balance was determined and to deter unfair collection practices. *Id.* at *4. Additionally, the language provided in the letter did not include proper language stating the consumer had a right to cure the default. *Id.* The Court of Appeals noted the language provided in the letter “merely state[d] ‘you may cure the default by paying the account balance shown above or making acceptable arrangements to do so’ (emphasis added)” *Id.* at *3. There was no evidence that the original creditor had sent proper notice of right to cure in the prior year, so the requirement to provide a proper notice still existed. *Id.* at *4. A third party debt buyer may not rely upon its status as a successor to the original creditor to avoid complying with the ICCC. *Id.* at *4 n.4.

4. Agency Reports on Consumer Credit

Two state regulatory units are charged by Iowa Code § 537.6105 with enforcing the ICCC with respect to the lending institutions they license and regulate: the Iowa Division of Banking and the Iowa Division of Credit Unions. Throughout the year the Administrator has frequent contact with these agencies regarding interpretation and enforcement of credit code provisions and changes in the consumer credit industry. The Administrator notifies a regulatory agency when the CPD receives a complaint involving one of the agencies’ licensees. Likewise, the agencies alert the Administrator of serious violations that come to their attention.

Each agency examines its licensees for ICCC compliance during the agency’s regular, periodic examinations. The Credit Union Division, overseeing the state’s 127 credit unions, examines each credit union every two years. The Credit Union Division received zero ICCC-related complaints in 2011. The Banking Division, which oversees licensing for 880 loan companies, delayed deposit locations, debt managers, closing agents, money servicers, and mortgage companies, received 96 written complaints in 2011, with seven of them relating to the ICCC. One complaint involved payment posting, two involved delinquency charges, one involved releasing security, and three involved collection practices.

5. Consultation With Other Jurisdictions

The CPD benefits from the experience and knowledge of credit code administrators in other states by participating in the American Conference of Uniform Consumer Credit Code States (ACUCCCS) every year. The conference is an excellent forum at which to discuss common problems in UCCC administration and collectively work toward fair resolution. The meetings enable each state to keep its administration of its consumer credit code in harmony with other jurisdictions as required by section 537.6104 of the Iowa Code.

The 2011 ACUCCCS was held in South Carolina, a state with travel restrictions. Iowa and a majority of other states attended the meeting. The only UCCC state not at the meeting was Wisconsin. Much of the discussion again centered around the Dodd-Frank Act in conjunction with state law and the new of the Consumer Financial Protection Bureau. Additionally, the group held an in-depth

discussion about the emergence of internet lending involving Native American tribes and the regulatory hurdles and challenges faced by those loans. And, as always, discussion on legislative changes to each state's statute was held.

The ACUCCCS states also keep in regular contact via an email listserve. The listserve provides an excellent opportunity for discussion of potential changes in the law regarding consumer credit and the states' interpretation of portions of the ICCC.

6. Availability of Consumer Credit

By keeping in frequent contact and exchanging information with other state consumer credit administrators throughout the year, the CPD has been able to keep abreast of trends in the nationwide consumer credit industry. However, we have been unable to compile information regarding the availability of credit to Iowa consumers.

From its contacts with consumers, businesses, and the industry, as well as other state agencies, the CPD is able to assess the availability of credit anecdotally. Currently, credit is widely available to almost all Iowa consumers. However, the quality of the credit that may be available to some is suspect. Thanks to the proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans, much of the credit available to consumers is only available at a very high cost. Higher interest open-end credit, in the form of credit cards, also appears to be widely available. Additionally, home loans have been harder to obtain for people with lower credit scores due to the ongoing financial crisis and new federal regulation. The tightening of home lending standards brought about by increased regulation may benefit consumers by better assuring they only obtain home loans that they may reasonably be expected to repay.

7. Proposed Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. Again in 2011, the Attorney General, through legislation, proposed raising the jurisdictional limit of the Code to \$50,000, the same jurisdictional limit now applicable under the federal Truth in Lending Act. As noted in last year's report, only consumer transactions under \$25,000 receive the substantial protections of the ICCC. The \$25,000 limit was set in 1974; in today's dollars, that 1974 limit is actually valued at over \$100,000. In fact, the average price of a new car—one of the classic models of a consumer credit transaction—is over \$25,000. The result is that many motor vehicle transactions are now excluded from the protections of the ICCC and escape state regulation altogether, which is something incredibly unusual as almost every state regulates motor vehicle credit transactions in some manner. Excluding a wide swath of consumer transactions which were originally contemplated to fall within the ICCC's jurisdiction leaves Iowa consumers deprived of the rights the ICCC sought to grant. The Attorney General's modest proposal of increasing the jurisdictional limit for motor vehicle transactions failed to make it out of subcommittee on either side of the Iowa legislature.

The interpretation and enforcement of the Iowa Consumer Credit Code is an important area where the activities of the Attorney General's office affect every Iowan. As the office deals with broad authority in the areas of interest rates, lending practices, and debt collection, it is clear that the ICCC is one of the more comprehensive and complicated of the state's laws. And as the financial crisis continues, ICCC protection and enforcement are more important than ever.